the Constitution should not apply until Congress should see fit, it can scarcely be contended that there is anything in the Constitution which would invalidate that condition. And there is no essential difference between that case and the present situation in Hawaii, though Hawaii was annexed by joint resolution. As the court frankly state, "While the actual decisions may be generally accounted for on other grounds, and while the *dicta* are not always consistent and not always favorable to the proposition," the principle on which the two cases are decided seems in accord with the prevailing view.

The result and the general doctrine seem equally satisfactory. A transition period very similar to the one decided for Hawaii existed in fact for Louisiana at the time it was added to the United States. Such a period will, almost undoubtedly, be fortunate, at least so far as it extends to such of our new possessions as are like the Philippines; it will relieve a partially civilized people from the burden of a constitution which is at present obviously unsuited for them and enable the national government to build up — with a much freer hand — an efficient colonial system. The whole question is essentially a political one. It seems probable that national policy will require that transition period to extend indefinitely, that any judicial interference would be most ill-advised.

PART PERFORMANCE OF ULTRA VIRES CONTRACTS. — Indiscriminate use of the term *ultra vires* has caused confusion as to the liability of corporations in contract. By clearing the ground of *dicta* based on contracts improperly called *ultra vires,* a recent decision has reached results at least logical. *National Home Building and Loan Association* v. *Home Savings Bank*, 54 N. E. Rep. 619 (Ill.). The defendant corporation contracted for an exchange of building lots, and as part of the consideration agreed to assume a mortgage in favor of the plaintiff on the lot received. The plaintiff filed a foreclosure bill and asked for a deficiency decree against the defendant on its contract with the original mortgagor, who was also made a party. The defendant did not oppose the foreclosure, and offered to return the lot to the mortgagor, but denied personal liability on the mortgage. The court held that since the contract was beyond the chartered powers of the corporation, no claim could be founded on it.

In cases like this there has long been a remarkable conflict of authority. In most jurisdictions, though enforcement of *ultra vires* contracts still wholly executory has been refused, yet where the corporation has received the benefit of performance by the plaintiff, as in the present case, an action has been allowed. *Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159; *Camden Ry. Co.* v. *Mays Landing Co.*, 48 N. J. Law, 530. It had generally been supposed that the law of Illinois was in accordance with this doctrine. *Eckman* v. *Ry. Co.*, 169 Ill. 312. The principal case is, therefore, an unexpected accession to the cases which take the opposite view. *Central Transp. Co.* v. *Pullman Co.*, 139 U. S. 24; *Davis* v. *Old Colony Ry. Co.*, 131 Mass. 258. These cases hold that since a corporation, within the limits of its charter, is privileged beyond individuals, it is against public policy to let it extend that sphere of privilege, — that *ultra vires* contracts are, therefore, always unenforceable.

When carried to its logical extreme, as in the principal case, this doctrine would seem at times to work unnecessary hardship. Courts may

well hesitate to be so strict, since much doubt may be cast on the so-called public policy on which it is founded. The interest of the public is no longer a unit. When corporations were few it was fair to give predominance to the interest of individuals competing with them. Since corporations now are many, the interest of those who contract with them seems at least as important to the public as the interest of individual competitors. The remedy in quasi-contract is not always sufficient to accomplish justice, since the plaintiff may be damaged by loss of the contract more than the defendant has actually gained. On the other hand, it seems impossible to make an exception in these cases on grounds of estoppel, for if public policy forbids the defendant to bind itself by words of contract, the same should be true of words of representation. The only logical ground for holding a corporation in these cases is by going to the opposite extreme and declaring that only the State can assail an *ultra vires* contract. 9 HARVARD LAW REVIEW, 255. This, however, prevents a corporation from rejecting a contract still wholly executory. Perhaps the only solution of this difficulty is to make an arbitrary exception on grounds of justice in cases where the plaintiff has fully performed his part.

PRIVILEGED COMMUNICATION. — In the case of *Caldwell* v. *Story*, 52 S. W. Rep. 850 (Ky.) the court passed upon the question of privilege in an action for libel. A note had been sent for collection by the plaintiff's agents through an intermediate bank to the Bank of Albany. The defendant, who was the payor, having refused to pay, the cashier endorsed upon the paper, "Never signed a note; fraud, forgery," and returned it through the intermediate bank. The endorsement was intended to give the reasons assigned by the payor for non-payment. It was shown to be a local custom to endorse notes with reasons for non-payment. The court held that the communication was privileged.

The true theory of privilege seems to be in the nature of an exception to the general right of every individual to an untarnished reputation. Under special circumstances, it is proper to relax the rigidity of the rule; for example, when one may protect himself or aid another only by remarks derogatory to a third person. But in such cases the general rule of liability is merely suspended with reference to the parties in interest. The established rule which is stated by the court "that any communication made in good faith upon any subject in which the person has an interest, or with reference to which he has a duty, public or private, either legal, moral, or social, if made to a person having a corresponding interest or duty, is privileged," is wholly consistent with the general theory. *Harrison* v. *Bush*, 5 E. & B. 344. But the court does not mention a consideration equally important that when the defendant makes a statement to protect his interest it must be clear that he was compelled to make it defamatory, and that he kept its publication within due bounds. If he go further than is necessary he should not be allowed the privilege. Odgers, Libel and Slander, 3d ed., 251, 260.

Clearly, therefore, extensions of the rule should be guarded. The principal case, however, goes far towards widening the group of persons with reference to whom publication may be privileged. Here the note with its endorsed statement went through the hands of persons employed by agent banks, and it can hardly be said that the statement was not communicated to them. If the number of intermediate agents be multi-